Supreme Court, U.S.
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No. 85-1510

In The
# Supreme Court of the United States
October Term, 1985

CHRISTY NEWSREEL SERVICES, INC.,

*Petitioner,*

v.

CITY OF ANN ARBOR,

*Respondent.*

## BRIEF OF CITY OF ANN ARBOR IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Dated: April 18, 1986

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## QUESTION PRESENTED

SHOULD THE FEDERAL COURTS ENTERTAIN A CHALLENGE TO A ZONING ORDINANCE BY A CORPORATION WHICH CANNOT DEMONSTRATE THAT IT HAS THE CAPABILITY OF ENGAGING IN THE BUSINESS REGULATED BY THE ORDINANCE?

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## STATEMENT OF CASE

Prior to the commencement of the present suit, Sun Services, through various entities, had repeatedly challenged the constitutionality of the adult entertainment provisions of the Ann Arbor zoning ordinance. It had challenged the zoning ordinance's constitutionality in two civil suits in the Federal District Court, in a suit in the State Circuit Court, and in appeals from the decisions from those Courts. In addition, it had litigated the constitutionality in criminal proceedings in the State District Court.

Subsequently, the present suit was filed by the Plaintiff on the same day it was incorporated. Its sole incorporator was an employee of Sun Services and its sole asset was an assignment of a leasehold interest in property in another City. That leasehold interest was assigned an arbitrary value of $1,000. The complaint alleged that Plaintiff corporation had "the desire and willingness" to buy or lease space for an adult movie theater in Ann Arbor. However, it gave no indication of how, where or when it would do this.

When the standing question was raised, Plaintiff attempted to show its capacity to operate an adult entertainment business by virtue of money owed to its sole incorporator and stockholder. However, it offered nothing to show that even if these funds were accessible, that they were in any way legally committed to the corporation.

The District Court granted Respondent's motion for summary judgment and dismissed the action based on lack of standing. This was appealed to the 6th Circuit Court of Appeals. That Court gave its verbal opinion

affirming the District Court at the end of Petitioner's oral argument on the appeal. Still pending before that Court is Respondent's motion for an award of attorney's fees based on the frivolous nature of the appeal.

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## REASON WHY THE WRIT SHOULD BE DENIED

### This Case Does Not Present an Article III Actual Case or Controversy.

Supreme Court Rule 17.1 requires that a writ of certiorari be granted only when there are special and important reasons for granting the writ. Rather than important, this claim is frivolous. It seeks to allow the raising of a constituional question by a corporation whose only business activity has been the filing of the lawsuit. If the Federal Courts were permitted to entertain such suits, a party who was unhappy with one judgment would need only to form a new corporation and try the claim in another form. However, the Constitution does not permit the Federal Courts to consider such matters.

The Constitution does not permit federal courts to solve hypothetical problems. Article III of the Constitution limits jurisdiction to actual cases and controversies. The concept of justiciability was analyzed in *Flast v Cohen*, 392 US 83, 20 L Ed 2d 947, 959, 88 S Ct 1942 (1968):

> "Thus, no justiciable controversy is presented when the parties seek adjudication of only a political question, when the parties are asking for an advisory opinion, when the question sought to be adjudicated has been mooted by subsequent developments, and

> when there is no standing to maintain the action." [footnotes omitted]

The facts presented to the District Court established that Christy Newsreel did not have legal standing to require an adjudication of the constitutional questions raised in its complaint. As a result, it was seeking an advisory opinion which it might use in connection with its business or someone else's.

Christy Newsreel alleged that it possessed "the desire and willingness" to buy or lease space for an adult movie theater in Ann Arbor (Complaint, paragraph 4, p. 2). Similar allegations were found insufficient by the Supreme Court in *Warth v Seldin*, 22 US 490, 45 L Ed 2d 343, 358 S Ct 2197. The Plaintiffs were attacking the constitutionality of allegedly exclusionary zoning and alleged a desire to reside in the community in question. In rejecting their claims for lack of standing, the Court stated:

> "We find the record devoid of the necessary allegations. As the Court of Appeals noted, none of these petitioners has a present interest in any Penfield property; none is himself subject to the ordinance's strictures; and none has ever been denied a variance or permit by the respondent officials."

Christy Newsreel had not secured a location for an adult movie theater, and it lacked the financial capacity to secure a location. Christy Newsreel responded that, through Karen Christy and, in turn, through her agreements with Sun Services, it could obtain sufficient funds to secure a location. However, there was no obligation on the part of Karen Christy or Sun Services to provide any funds to Christy Newsreel. It was, as Judge Joiner noted, sim-

ply a "paper corporation" with no financial capacity to carry on the business it alleged a desire to initiate. The complaint is void of any allegation of prosecution or threatened prosecution for violation of the City ordinance. This is understandable, because the City was unaware of the existence of Christy Newsreel until the service of the complaint. However, a demonstration of such injury or threatened injury is essential to establish standing under Article III.

> "Plaintiffs must demonstrate a 'personal stake in the outcome' in order to 'assure that concrete adverseness which sharpens the presentation of issues' necessary for the proper resolution of constitutional questions. *Baker v Carr*, 369 US 186, 204, 7 L Ed 2d 663, 82 S Ct 691 (1962). Abstract injury is not enough. The plaintiff must show that he 'has sustained or is immediately in danger of sustaining some direct injury' as the result of the challenged official conduct and the injury or threat of injury must be both 'real and immediate,' not 'conjectural' or 'hypothetical.' " *Los Angeles v Lions*, 75 L Ed 2d 675, 684 (1983).

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## RELIEF REQUESTED

Respondent City of Ann Arbor respectfully requests that the Court deny Petitioner's writ for certiorari.

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